

# CITY RESPONSE TO ENVIRONMENT COMMISSION COMMENTS ON SWM ORDINANCE AND REGULATIONS (Received by City 2/4/08 via email)

City staff has prepared the following responses to the comments received from the Environment Commission during the open record period. *City responses are shown in italics after each comment. Comments that have been incorporated into the proposed legislation are marked in bold face.*

Some comments are related to strengthening requirements for developers/contractors on construction permits. Staff considered these issues when the City's SWM law was updated in 2002 and tightened a number of provisions. In staff's opinion, further restrictions would increase permit review and inspection times for small builders (such as homeowners constructing additions on their houses) without improving overall sediment control or water quality protection. Additionally, staff generally does not support changing language taken directly from the State's SWM or Sediment Control Regulation to reduce the possibility that the State will oppose the re-phrasing of its regulations.

Some comments relate to Low Impact Development SWM techniques or non-structural techniques. Since the Maryland Department of Environment is preparing new LID regulations in 2008, the City plans to update the SWM law and regulations in 2009 with the State's changes. At that time, the Environment Commission will be asked to review the law and regulations again for these issues and these comments may be reconsidered then.

## Article I. Section 19-1. Definitions

Definition of "conveyance" is limited only to properties that are obtained by the city at no cost. Why is this limited? Isn't a property also "conveyed" to the city when it is purchased, or obtained by other means?

*SWM facilities conveyed (via dedication or by easement) to the City are built by developers at their own cost, then given to the City for public maintenance as part of the Planning and Stormwater Management Permit approval conditions. This is phrased to make it clear that the City does not intend to purchase SWM facilities from builders who are obligated to provide the SWM facility as a condition of development.*

Definitions of "person" and "property owner" includes a number of categories that should be worded the same. The focus is on parallel construction.

*There is no definition for "person" in the ordinance.*

Definition of "sediment" is limited to the "product of erosion." Why is that? Aren't there other sources of sediment?

*Sediment, in the context of this chapter, is related to either the Stormwater Management Permit or Sediment Control Permit requirements for developers. The definition is taken directly from the State's SWM and Sediment Control Regulations, and is correct within this context.*

Definition of "stop work order." Include in second sentence as follows: "Work allowed by the Department necessary to correct the violation or . . ."

*The definition should remain as it is to allow for the unusual situation where the contractor must take emergency action to protect against damage before receiving approval from the Department, such as during a large storm event.*

There is some ambiguity in the definitions of “Stormwater management facilities” (pg 9) versus “Structural stormwater management facilities” (pg 10). The former definition makes use of the term “structural devices”, and does not include reference to “non-structural features (practices),” even though it should be the broader term. However, the latter definition’s title is “Structural stormwater management facilities”, but the definition includes reference to non-structural features such as ponds, wetlands, etc. This is rather confusing.

Suggest revising text in definition for “Stormwater management facilities” to state... ”means a structural device and/or non-structural management practices [or combination of] to control or treat stormwater runoff to mitigate flooding and/or reduce pollution. It includes all land, materials, and appurtenances used in construction and operation of the facility.”

*The current State SWM Design Manual separates SWM methods into ‘urban BMPs’ (Best Management Practices) that must follow specific sizing and design criteria vs. non-structural ‘site design techniques’ that do not have detailed engineering specifications and are not built with pipes and control structures. The City uses the terms ‘structural SWM facilities’ vs. ‘non-structural SWM practice’ in place of the State’s designations, but they mean the same things. Since structural SWM facilities currently are permitted differently than non-structural facilities (for example, DPW does not require SWM maintenance easements on homes with dry wells), staff recommends not revising these definitions or requirements until the State has given direction on new standards for non-structural SWM facilities. When the State updates its Design Manual to incorporate the LID practices, this is likely to be modified and the City will change its law/regulations accordingly.*

p. 9, "stormwater management utility fee" - suggest changing this to a term that is more acceptable to the taxpayer. Perhaps eliminate the word “utility.”

*The term ‘utility’ was chosen to reflect that the comprehensive SWM program (including storm drains, SWM facility maintenance and water quality protection) is similar to the water and sewer utility or the electric utility services and needs to be managed as other infrastructure programs.*

**p. 10, Sec. 19-2 Purpose (a): suggest adding “ to protect and enhance aquatic life, streams, and the watershed”**

*Agree – language partially modified.*

#### Article I. Section 19-3. Scope; exemption

(d)(1) – page 11. Agricultural land management activities –

Agricultural areas are limited within the City’s geographic zoning authority; however, sediment and pesticide runoff from Ag activities greatly contribute to stream quality deterioration. Ag activities should be exempted from the Stormwater Management Utility Fee, but suggest should still provide for adequate stormwater runoff mitigation practices.

p. 11, Sec. 19-3, Scope; exemption, (a) (1) suggest changing 5,000 sf to 3,000 sf. or 100 cubic yards of excavated soil (the latter is consistent with the state). Five thousand seems like a very high number, and will apply to very few residential properties.

*This was considered in the 2002 update to the City's SWM and Sediment Control Law and Regulations and was chosen to match the State's criteria for land disturbance. SWM is not related as much to volume of earthwork as to disturbed area. The City added that SWM also applies to the construction of more than 2,000 sf of impervious area (intended to capture substantial additions) or any new impervious area on properties other than improved single-family lots, which is much more stringent than the State's statutes.*

p. 11, Sec. 19-3, Scope; exemption, (a) (2) suggest changing 2,000 sf to 1,000 sf.

*See above.*

p. 11, Sec. 19-3, Scope; exemption, (b) (1) suggest changing 5,000 sf to 3,000 sf or 100 cubic yards of excavated soil.

*This was considered in the 2002 update to the City's SWM and Sediment Control Law and Regulations and was chosen to match the State's criteria. The City added that sediment control also applies to the construction of a new building or work in a stream buffer, which is more stringent than the State's statutes.*

p. 15, Sec. 19-19, additional penalties and remedies (b) plus costs for damage to the ecosystem. Daily rate of \$\_\_\_\_. IMPORTANT: there should also be included (1) a fine option where appropriate; (2) the ability to seek injunctive relief to stop an ongoing violation; and (3) remedial authority to correct natural resource damages. The remedial authority should include the City's ability to correct damages or to require the wrongdoer to do so.

*The Assistant City Attorney explained that the law already provides for these recommended penalties and remedies. Fines are provided for by separate resolutions, not in the law. The provided measures are adequate to cover restoration of natural resources damages.*

p. 17, Sec 19-30 Permit Denial. (a) suggest adding at end or "cause substantial environmental damage" *The City would have to specify what would constitute "substantial environmental damage". This is not part of the State statutes, and the City already uses other requirements, such as forest conservation, stream buffers and wetlands protection, to account for natural resources protection..*

p. 20, Sec. 19-37SWM Policy: DELETE: "eventually" and "shall"

*Staff believes that the language indicates the reality that SWM for all parts of the City is a longterm goal that will not be met in a specified timeframe.*

**p.20 Sec. 19-39: Why "2003?"**

***This was the sunset date for the previous set of SWM ordinance/regulation requirements as specified in the 2002 update to the City legislation. Since the date has passed, this may be removed.***

Article IV. Stormwater Management. Division I. Section 19-45. On-site stormwater management criteria - page 21. Suggest revising the statement to read: "Non-structural stormwater management measures shall be incorporated to the maximum extent practicable in accordance with the Design Manual and the Regulations."

*Language related to non-structural practices will be revisited in 2009 after the State has completed the new LID regulations.*

**p. 22, Sec. 19-49, Stormwater Management Alternatives (b) “The city shall not approved the use of stormwater management alternatives unless . . .” suggest adding “beneficial effects for the ecosystem can be demonstrated”**

*Agreed; language modified.*

p. 27, Sec. 19-80, “stormwater management utility” – suggest changing to (see above comment for page 9). Also at other places in the document. FIRST SENTENCE: INSERT AS FOLLOWS: “To protect the public health, safety, welfare, and the environment” . . . **Last sentence has an extra “that”.**

*See above for keeping the term ‘utility.’ The term ‘welfare’ is considered to include the City’s interest in environmental protection. Corrected.*

p. 31, Sec. 19-87 “other improved lot fee.” Suggest using different words. We realize that “improved” is a technical term, but the connotation is that paving over a lot, for example, is an “improvement.” Is there an alternate term that the City could employ, such as “developed lot.” And then for “unimproved lot” use “greenfield lot.” We do not view it an improvement to increase impervious area.

*‘Improvement’ is the tax assessment term for developed conditions on lots, so this will be retained to be consistent with other parts of the City Code.*

## ENVIRONMENT COMMISSION COMMENTS ON SWM REGULATIONS

(Received by City 2/4/08 via email)

p. 2, A. (1) (a) suggest changing 5,000 sf to 3,000 sf

*See related comments under ordinance responses.*

p. 2, A (1) (b) suggest changing 2,000 sf to 1,000 sf

*See related comments under ordinance responses.*

p. 3, B (1) (d) Excellent!

p. 3, B (2) (a) Great!

p. 12, (L) suggest adding “identify native plants”

*The use of native plants are specified in the plan review comments, along with many other details that are not included in regulations. On occasion, alternative species/varieties are accepted if native plants have shown susceptibility to disease or over-browsing.*

p. 12 (S) Great!

p. 13 (3) “The pre-development peak discharge rate shall be computed assuming that all land cover in the tributary area are meadow.” Why not a forest, or a forest-meadow mix? Why are we assuming a meadow here? Is there a difference in discharge rate? We assume that there is, but do not know whether there is some benefit to making this assumption.

*The regulations do provide that the existing land cover is what must be modeled; meadow is the*

*least pervious cover for pre-development conditions so it is used as a default for calculations on sites that are already disturbed and have neither forest nor meadow. This impacts the sizing of the SWM facilities, and is in accordance with engineering practices.*

p. 13, (A)(4) We suggest making it “The developer shall incorporate,” which would show that the City is serious. The language that already is in there “to the degree that they can accommodate the additional flow of water” already gives some lenity.

*At this time, site layout is more under the purview of the Department of Community Planning and Development Services (CPDS). This may be revisited in 2009 after the State has completed the new LID regulations.*

p. 14, C (2) What about ecosystem and aquatic life protection? What is the purpose of this section? Can the environment also be protected?

*100-year floodplain protection is intended only to protect man against nature in the extremely rare storm event. The City has prohibited development in the 100-year floodplain since the late 1970s both to protect stream valleys and manmade development. This section is intended only to determine when a SWM facility must be oversized to store the 100-year runoff condition from a particular property, which is extremely expensive and not likely to improve stream conditions, given the numerous other properties developed without 100-year floodplain controls.*

p. 16, B (2) (a) (6) suggest 90%. Where do these numbers come from?

*The vegetation survival rate of 75% is inspection staff’s recommendation for a measurement easy to visually estimate in the field. Given that some plant die-off is common due to drought, animal browsing, or storms, 75% is considered adequate and the plants will be able to fill in any gaps over time.*

p. 17, B (2) (b) (3) suggest 90%.

*See above.*

p. 17, B, (2) (c) (7) suggest 90%.

*See above.*

p. 18 (5), suggest 90%.

*See above.*

p. 20, G: suggest that nonstructural SWM be inspected once every 3 years, just to confirm they are still working as intended.

*Language related to non-structural practices will be revisited in 2009 after the State has completed the new LID regulations.*

p. 20, A (a) suggest changing 5,000 sf to 3,000 sf. or 100 cubic yards of excavated soil.

*See related comments under ordinance responses.*

p. 21, A (c) suggest changing 5,000 sf to 3,000 sf or 100 cubic yards of excavated soil.

*See related comments under ordinance responses.*

p. 21, A (c) suggest deleting “minor commercial development.” We do not understand what this means,

or why this is in here. It does not fit well with the other exceptions.

*Article III, Division 1, A.D. describes examples of small land disturbing activities such as patios, deck foundations, sheds, etc. Minor commercial development such as installation of a portico or awning falls under this same category.*

p. 23, B (c) (3) suggest changing “six inches in diameter” to “four inches in diameter”

*Showing trees greater than 6” on the sediment control plan is consistent with the City’s Forest Conservation Permit process.*

p. 25, D (2) (a) and (b): why not immediately? Or at least a shorter time period.

*This is consistent with the State’s Sediment Control Regulations, and recognizes that the contractor may need to move the same earth several times within a few weeks during construction. It is impractical to spread grass seed/mulch for stabilization, then move the earth before it can sprout.*

p. 25, E: suggest changing 5,000 sf to 3,000 sf or 100 cubic yards of excavated soil.

*See related comments under ordinance responses.*

p. 27, A (2) (a) suggest deleting “in such a manner to damage or interfere with the use of such property.”

*This is consistent with the State’s Sediment Control Regulations.*

p. 30, Division 2, B (2) (b) suggest changing “ and paths wider than four feet” to “and paths wider than two feet”

*The measurement of impervious area from GIS-based aerial photography is not accurate on widths less than four feet.*

p. 30, Division 3, B (2): they should be. Let’s encourage this.

*Language related to non-structural practices will be revisited in 2009 after the State has completed the new LID regulations.*

**p. 33 E, (3) (a) what is water quality protection volume – how is it achieved?**

*See the definition in the ordinance under Water quality volume control (WQv). This is the State’s term for treating runoff to remove pollutants and improve water quality. Language under the SWM Utility section has been modified to use the same term as the definition.*

**p. 34, F, (2) (a) what is the difference between this and (b)?**

*See the definition in the ordinance under Channel protection storage volume control (CPv). This is the State’s term for treating runoff to slow the release rate and reduce downstream channel erosion. Language under the SWM Utility section has been modified to use the same term as the definition.*